

Appeal held to have been taken in time. *Wrightson v. Tydings*, 94 Md. 360.

Appeal dismissed for not having been taken in time. *Porter v. Timanus*, 12 Md. 292; *Mayhew v. Soper*, 10 G. & J. 372; *Sewell v. Sewell*, 1 H. & G. 10. And see *Billingslea v. Henry*, 20 Md. 285.

Where the record is not transmitted to the appellate court within the required time, the appeal will be dismissed notwithstanding an agreement of counsel to the contrary. *Powell v. Curtis*, 78 Md. 500.

This section applied by analogy. *Stanley v. Safe Deposit Co.*, 88 Md. 407; *Redman v. Chance*, 32 Md. 53.

Cited but not construed in *Schwallenberg v. Jennings*, 43 Md. 556.

*Cf.* sections 6, 32 and 33, and notes.

1904, art. 5, sec. 63. 1888, art. 5, sec. 61. 1860, art. 5, sec. 42. 1798, ch. 101, sub-ch. 2, sec. 11. 1798, ch. 102, sub-ch. 15, sec. 18.

**63.** The court of appeals shall either affirm the decree, judgment, decision or order of the court below, or direct in what manner it shall be changed or amended; and the decision of the court of appeals shall be final and conclusive, and when certified under the seal of the court and transmitted to the orphans' court, the orphans' court shall proceed according to the tenor and directions thereof.

Where claims were allowed without sufficient proof, the case was remanded to the orphans' court for further testimony. *Bowling v. Lamar*, 1 Gill, 366.

The court of appeals only renders such judgment as the orphans' court should have rendered, and hence the judgment is not conclusive as respects the rights of the parties to the cause. *Levering v. Levering*, 64 Md. 414.

*Ibid.* sec. 64. 1888, art. 5, sec. 62. 1860, art. 5, sec. 43. 1798, ch. 101, sub-ch. 15, sec. 19.

**64.** An appeal from the orphans' court shall not stay any proceedings therein which may with propriety be carried on before the appeal is decided, if the said orphans' court can provide for the conforming to the decision of the court of appeals, whether the said decision may eventually be for or against the appellant.

Where an order directing money to be brought into court has been appealed from, but pending the appeal the orphans' court proceeds to enforce its order by proceedings for contempt, the court of appeals will stay further action by the orphans' court. *Bruscup v. Taylor*, 26 Md. 410.

Pending an appeal from an order revoking letters, the letters remain in full force. If an order is passed, however (prior to the actual granting of letters), ordering that letters be granted, they will not be granted pending an appeal from such order. *State v. Williams*, 9 Gill, 176.

The appeal only stays such proceedings as are thereby affected and which could not be consistently carried on until its termination; what may be done pending an appeal. *Jones v. Jones*, 41 Md. 360.

This section does not authorize the appointment of a new administrator pending an appeal, and the sequestration of the former administrator's property. *Biddison v. Storey*, 57 Md. 97.

This section having no application, the proceedings should have been stayed. *Offutt v. Gott*, 12 G. & J. 387.

As to a stay of proceedings where issues are sent to a court of law, see sec. 5.

*Cf.* sec. 29, and notes.

*Ibid.* sec. 65. 1888, art. 5, sec. 63. 1860, art. 5, sec. 44. 1818, ch. 204, sec. 2.

**65.** If upon an appeal being entered in the orphans' court, the parties shall mutually agree, and enter their assent in writing, to be filed by the register of wills, that the appeal shall be made to the circuit